



ARKANSAS SENTENCING COMMISSION

1302 Pike Avenue, Suite E • North Little Rock, AR 72114

Phone: (501) 682-5001 • Fax: (501) 682-5018

Impact Assessment for HB1878 Sponsored by Representative Gazaway

Subtitle CONCERNING THE CONTROLLED SUBSTANCES OF FENTANYL AND HEROIN.

Impact Summary¹ Cannot be determined. The proposed bill increases the criminal penalty for some occurrences of controlled substance offenses involving fentanyl and heroin. Because available data does not adequately distinguish the weight and type of controlled substances, the projected impact of the proposed bill cannot be determined.

Change from Current Law² Amends multiple provisions in the Arkansas Criminal Code to provide more severe penalties for offenses involving the controlled substances of fentanyl and heroin. Under current law, heroin is a Schedule I controlled substance and fentanyl is a Schedule II controlled substances. Both are considered under general provisions for Schedule I and II controlled substances for offenses of possession, possession with the purpose to deliver, delivery, manufacture, and trafficking a controlled substance. The proposed bill removes heroin and fentanyl from the criminal provisions covering most Schedule I and II controlled substance and instead places heroin in with penalties for methamphetamine and cocaine and creates a separate code section for fentanyl. Please note that criminal offenses created by the proposed bill regarding fentanyl differentiates only by circumstances surrounding the offense and does not increase criminal penalties based in weight. The table below details these changes.

Current law - Heroin and Fentanyl			Proposed Bill - Heroin			Proposed Bill - Fentanyl		
Simple Possession								
A.C.A. §	Weight	Class	A.C.A. §	Weight	Class	A.C.A. §	Weight	Class
5-64-419 (b)(2)(A)	< 2 g	D	5-64-419 (b)(1)(A)	< 2 g	D	5-64-421 (a)	Not weight based	C
5-64-419 (b)(2)(B)	≥ 2 g but < 28 g	C	5-64-419 (b)(1)(B)	≥ 2 g but < 10 g	C			
5-64-419 (b)(2)(C)	≥ 28 g but < 200 g	B	5-64-419 (b)(1)(C)	≥ 10 g but < 200g	B			
Possession with the purpose to deliver								
5-64-424 (b)(1)	< 2 g	C	5-64-420 (b)(1)	< 2 g	C	5-64-421 (b)	Not weight based	A
5-64-424 (b)(2)	≥ 2 g but < 28 g	B	5-64-420 (b)(2)	≥ 2 g but < 10 g	B			
5-64-424 (b)(3)	≥ 28 g but < 200 g	A	5-64-420 (b)(3)	≥ 10 g but < 200g	A			

Table continued next page

¹ This impact assessment was prepared 4/7/2021 4:23 PM by the staff of the Arkansas Sentencing Commission pursuant to A. C. A. § 16-90-802(d)(6) with data supplied by the Department of Corrections and the Administrative Office of the Courts. A micro-simulation model may be used for bills which have the potential for significant impact on correctional resources. The following designations will be used: “minimal” = less than 10 offenders per year will be affected; “medium” = would require budgetary increases for ADC costs; and “major” = would require budgetary increases for ADC costs and construction costs for additional beds.

² Standard punishment ranges:

Class Y 10-40 years or life
Class A 6-30 years; up to \$15,000
Class B 5-20 years; up to \$15,000

Class C 3-10 years; up to \$10,000
Class D 0-6 years; up to \$10,000
Unclassified As specified in statute

Misdemeanors
Class A Up to 1 year; up to \$2,500
Class B Up to 90 days; up to \$1,000
Class C Up to 30 days; up to \$500

Current law - Heroin and Fentanyl			Proposed Bill - Heroin			Proposed Bill - Fentanyl		
Delivery								
5-64-426 (c)(1)	< 2 g	C	5-64-422 (b)(1)	< 2 g	C	5-64-421 (c)	Not weight based	Y
5-64-426 (c)(2)	≥ 2 g but < 28 g	B	5-64-422 (b)(2)	≥ 2 g but < 10 g	B			
5-64-426 (c)(3)	≥ 28 g but < 200 g	A	5-64-422 (b)(3)	≥ 10 g but < 200g	Y			
Manufacture								
5-64-427 (c)(1)	< 2 g	C	5-64-423 (c)(2)(B)	< 2 g	C	5-64-421 (d)	Not weight based	Y
5-64-427 (c)(2)	≥ 2 g but < 28 g	B	5-64-423 (c)(2)(B)	≥ 2 g but < 10 g	B			
5-64-427 (c)(3)	≥ 28 g	A	5-64-423 (c)(2)(B)	≥ 10 g but < 200g	Y			
Trafficking								
5-64-440 (b)(2)(3)	≥ 200 g	Y	5-64-440 (b)(1)	≥ 200 g	Y	5-64-440 (b)(2)	≥ 1 g	Y

* Shaded cells indicate changes by the proposed bill which will result in an offender becoming ineligible for placement in a Community Correction Center. See A.C.A. § 16-93-1202 (10) for current law regarding target groups.

Impact Information The proposed bill increases the penalties for some controlled substance offenses. Current data on criminal convictions and sentences only distinguishes the type and weight of controlled substances to the extent that the offense is distinguished in the Arkansas Code Annotated. For example, data distinguishes a Schedule III controlled substance from a Schedule VI controlled substance but is not specific as to the type of Schedule III substance. For this reason, the projected impact of the proposed bill cannot be determined.